

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

JUDGMENT

Daleep

Versus

State of Rajasthan

S.B. CRIMINAL APPEAL NO. 987/2001
against the judgment and Order dated
07.11.2001 passed by Additional Sessions
Judge, Nohar, district Hanumangarh in
Sessions Case No.28/2001.

Date of Judgment : 3rd July, 2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. H.K.Jain for the appellant.

Mr. J.P.S. Choudhary, P.P. for the State.

BY THE COURT:-

Reportable

This criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter) is directed against the judgment and order dated 07.11.2001 passed by Additional Sessions Judge, Nohar, district Hanumangarh (for short 'the trial court' hereinafter) in Sessions Case No. 28/2001, whereby the trial court convicted and sentenced the appellant for the offences under Sections 376 and 450 IPC as under :-

(i) Under Section 450 IPC : three years rigorous imprisonment

and a fine of Rs.5000/-, in default of payment of fine further to undergo two months rigorous imprisonment;

(ii)Under Section 376 IPC : Seven years rigorous imprisonment and a fine of Rs.10,000/-, in default of payment of fine further to undergo three months rigorous imprisonment;

It was further directed by the trial court that on depositing the fine amount, a sum of Rs. 10,000/- be paid to the victim of rape as compensation.

Aggrieved by the judgment and order impugned, the appellant has filed the instant appeal.

I have heard learned counsel for the appellant and public prosecutor for the State. Perused the judgment and order impugned as also record of the trial court. I have scrutinized, scanned and evaluated the evidence on record.

It is contended by the learned counsel for the appellant that the trial court fell in error in holding the prosecutrix to be of 13 years in age. According to learned counsel, the prosecutrix on the relevant date of occurrence was above 18 years of age. Learned counsel further contended that even the prosecutrix stated that there was no ejaculation of semen, whereas the report of Forensic Science Laboratory Ex.P-

13, on examination of Salvar of the prosecutrix and Pant of the appellant, detected the human semen. According to learned counsel, this makes the version of the prosecutrix doubtful.

Learned public prosecutor appearing for the State supported the judgment and order impugned and contended that there is strong evidence of the prosecutrix, a victim of rape, corroborated by medical evidence. Learned public prosecutor further submits that from the oral as well as documentary evidence, the date of birth of the prosecutrix i.e. 12th July, 1988 has been established and the occurrence is dated 11.2.2001, and therefore, on the relevant date of occurrence, the age of the prosecutrix was 13 years in age.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

A first information report Ex.P-3 was promptly lodged by PW-4 Satpal, father of the prosecutrix, alleging therein that his daughter prosecutrix PW-1 aged 13 years while she was all alone in the house, the appellant committed rape on her. On hearing her cries, PW-7 Kuldeep and Ravindra came and rescued her and the appellant ran away. On this report, police registered a crime report and investigated the matter. The

prosecutrix was medically examined. Her clothes were seized and sent for chemical examination to Forensic Science Laboratory, Jaipur. Statements of the witnesses were recorded and thereafter the police filed a challan against the appellant. The trial court framed the charges which the appellant denied. Before the trial court, the prosecution adduced evidence by producing as many as 10 witnesses and documents Ex.P-1 to P-17.

PW-1 the prosecutrix, aged 13 years, a student of Class-V, has stated that on the relevant date of occurrence she was reading a book in the house. Her mother had gone to the field and her father had gone to Suratgarh. At about 4.30 P.M., while she was studying, the appellant jumped over the wall and came in her house, caught hold her hand, pressed her mouth, took her in Kotha, laid her on the cot, removed her Salvar, opened zip of his pant, took out his penis and forcibly penetrated in her Vagina. She made all efforts to resist and save herself, but could not succeed. On penetration of male organ (Penis) by the appellant, it started bleeding from her vagina and she suffered pain. However, she was not left by the appellant and given threatening to kill her. Thereafter, while the appellant was closing the zip of his pant, she raised cry, on which he ran away by climbing over the wall. On hearing her cries, Kuldeep

and Ravindra came by jumping over the wall as the main gate of the house was closed from inside. The appellant was chased by these persons but could not be apprehended. When her mother PW-3 Chandra Kala came, she narrated the entire incident to her. When her father came from the field, she and her mother informed the occurrence to him, on which the report was lodged. The police seized the Salvar, Kurta and Chunni of her which she was wearing at the time of occurrence. She has proved the FIR Ex.P-1. She was medically examined by the doctor. She has identified the appellant in Court and stated that he is resident of Rawatsar where he is undertaking the work of Tyre Patching and his shop is at a little distance from her house and therefore, she knows him. She stated that the appellant came in her house by jumping over the wall from the side of Roop Singh's house having a height of six feet. The House of Roop Singh generally remains locked. Since her parents were out of station, and therefore, she locked the house from inside and the appellant committed house trespass by jumping over the wall of her house and thereafter committed rape on her without her wish and consent. She stated that the appellant forcibly had a sexual intercourse with her for 10-15 minutes, however, there was no ejaculation of semen.

The statement of prosecutrix finds corroboration

from the statement of PW-3 Chandra Kala, mother of the prosecutrix, who stated that her daughter prosecutrix aged 13 years while all alone at home was subjected to forcible sexual intercourse by the appellant by penetrating his male organ in the vagina of the prosecutrix which on coming to the house was disclosed to her by the prosecutrix. The prosecutrix disclosed her that due to forcible penetration of penis in her vagina, she suffered pain and started bleeding. She also stated that while she was struggling by putting resistance, she suffered the injuries. The injuries suffered by the prosecutrix have been established by the statement of PW-2 Dr. Ganesh Kumar Agarwal. She further stated that the prosecutrix also said that the appellant came by jumping over the wall. On hearing the cries of prosecutrix PW-7 Kuldeep and Ravindra came by jumping over the wall towards Kitchen since the house was locked from inside. When her husband came next day from Suratgarh, she and her daughter narrated the occurrence, on which the report was lodged. She also stated that she, being an illiterate lady, could not say exactly when she gave birth to the prosecutrix.

Similar is the statement of PW-4 Satpal, father of the prosecutrix, who on return from Suratgarh, was informed by his wife and prosecutrix about the manner in which the occurrence

took place and thereafter the report was lodged by him vide Ex.P-3. He stated that the police seized the garments of the prosecutrix which she was wearing at the time of occurrence as also stated that the appellant is having a tyre patching shop at a little distance from his house and therefore, he is known to him. The appellant was arrested and his pant was also seized by the police. He stated that after his actual marriage with PW-3, Muklava was held in the year 1985 and after three years from the date of Muklava his wife gave birth to the prosecutrix.

PW-7 Kuldeep who came soon after the occurrence on hearing the cries of the prosecutrix along with Ravindra, stated that he went to the house of Ravindra which is situated near to the house of Satpal, father of the prosecutrix, and when they were near to the house of Satpal, they heard the cries of the prosecutrix. They knocked the door, but since it was locked from inside they climbed over a water tank and went inside the house of Satpal, seeing them, the appellant ran away by climbing over the wall. He was chased but could not be apprehended. The prosecutrix informed them that the appellant committed forcible sexual intercourse with her by tearing her clothes. The mother of the prosecutrix was at field and father had gone to Suratgarh. The police seized the garments of the prosecutrix which she was wearing at the time of occurrence

vide Ex.P-1. He has identified the appellant in the Court and stated that he is resident of Rawatsar having a tyre patching shop and therefore, he is known to him. He stated that the wall which the appellant jumped is having a height of 5-6 feet.

PW-2 Dr. Ganesh Kumar Agarwal, who at the relevant time was the Medical Officer, Govt. Hospital, Rawatsar stated that on 11.2.2001 he medically examined the prosecutrix, aged 13 years and noticed the following injuries vide Ex.P-2 :-

- (1) Multiple abrasion of liner snap of varying size of simple and blunt nature on left side of neck.
- (2) A liner abrasion 3x1/2 cm on right side of neck simple and blunt.
- (3) Abrasion of 2 x 1 cm on ext. aspect of left forearm on lower part simple and blunt nature.

The duration of injuries was within 36 hours.

On examination of private parts of the prosecutrix, he noticed bleeding and on P/V Examination one finger passes. There was local tenderness present during P/V Examination. Hymen membrane freshly ruptured. In his opinion, the prosecutrix was subjected to rape. He also stated that on the date of his examination the prosecutrix was present in Court and he identified her and stated that he has medically examined her. The prosecutrix was bleeding from Vagina due to fresh tearing of

hymen. He categorically stated that the bleeding from the vagina of the prosecutrix was different from the one on menstruation.

Thus, from the statement of the prosecutrix PW-1, her mother PW-3 Chandra Kala, father PW-4 Satpal and PW-7 Kuldeep it has been established beyond reasonable doubt that it was the appellant, finding the house of the prosecutrix locked from inside, entered in the prosecutrix house by jumping over the wall from the side of Roop Singh's house which was locked; caught hold the prosecutrix, pressed her mouth, took her to Kotha, removed her Salvar and forcibly penetrated his penis in the vagina of the prosecutrix and as such committed forcible sexual intercourse causing injuries on the person of the prosecutrix. From the statement of PW-2 Dr. Ganesh Kumar it has been established that the prosecutrix suffered three injuries as noticed above. There was a fresh tearing of hymen and bleeding and in his opinion, the prosecutrix was subjected to rape. The appellant has been identified by the prosecutrix and PW-7 Kuldeep as also PW-3 Chandra Kala and PW-4 Satpal. It has been proved from the statement of PW-6 Ram Singh, Head Master, Shanti Niketan Public Middle School, Rawatsar where the prosecutrix was studying that as per the school record her date of birth is 12th July, 1988. PW-6 Ram Singh has proved scholar register P-8 wherein at serial No.206 admission of the

prosecutrix has been entered, certified copy of which is Ex.P-8A, Transfer Certificate Ex.P-9 certified copy of which is Ex.P-9A showing the date of birth of the prosecutrix as 12th July, 1988. He has also proved Ex.P-10, the age certificate. From the school record, he has proved that the date of birth of prosecutrix is 12th July, 1988. The age disclosed by the prosecutrix, her parents as also in the medical evidence finds corroborated by the statement of PW-6 Ram Singh, Head Master of the School. Thus, it has been established that on the relevant date of occurrence, the age of the prosecutrix was about 13 years in age.

PW-8 Hanuman Singh, medically examined the appellant on 23.2.2001 and proved the report Ex.P-11. According to him, there is nothing to suggest that the appellant is not capable of performing sexual intercourse. Thus, from Ex.P-11 and statement of PW-8, it has been established that on the relevant date of occurrence, the appellant was capable of performing sexual intercourse.

PW-10 Rameshwar Lal, the then Incharge police station, Rawatsar, has proved the investigation, FIR Ex.P-3 lodged by PW-4 Satpal, Parcha FIR Ex.P-14, Site Map Ex.P-15, Site Inspection Note Ex.P-15A, seizure of the garments which the prosecutrix was wearing at the time of occurrence vide Ex.P-

1, arrest of the appellant vide Ex.P-16, seizure of pant vide Ex.P-17 and certificate regarding age of the prosecutrix Ex.P-10. He stated that the articles seized were sealed on the spot and deposited in the Malkhana.

PW-9 Santkumar Incharge Malkhana proved that the seized articles were deposited with the Malkhana, which were sent to Forensic Science Laboratory through PW-5 Mahendra Singh who stated that he took the sealed packet to the office of S.P., got a forwarding letter prepared and then handed over the same to Forensic Science Laboratory on 17.4.2001 vide receipt Ex.P-5. He has proved the Rojnamcha entry Ex.P-6, Ex.P-7 and Ex.P-7A. The report of Forensic Science Laboratory Ex.P-13 reveals that it received six packets which were properly sealed bearing seal impression which tallied with specimen seal impression. On chemical examination, human semen was detected on Ex.No.1 and Ex.No.4 i.e. Salwar and Pant. The report of FSL further corroborates the prosecution case that the Salwar which the prosecutrix was wearing at the time of occurrence and the pant which the appellant was wearing at that time, were found stained with human semen. Merely because the prosecutrix, obviously of such an age had hardly any understanding about the ejaculation of human semen, stated that there was no discharge of semen, it would not demolish the

prosecution case, which is otherwise acceptable by reliable evidence.

From the above discussion of the prosecution evidence, the contention of the learned counsel regarding age of the prosecutrix and non-ejaculation of semen have no force and therefore, cannot be accepted. On close scrutiny of the statements of witnesses, I am of the opinion that the prosecution has proved the case beyond reasonable doubt against the appellant and therefore, the trial court was justified in convicting and sentencing the appellant as noticed above. In the circumstances therefore, I do not find any error in the judgment and order impugned.

In the result, the appeal fails and is hereby dismissed. The judgment and order impugned dated 7.11.2001 passed by Additional Sessions Judge, Nohar in Sessions Case No.28/2001 convicting and sentencing appellant Daleep S/o Rameshwar Lal is affirmed.

(H.R.PANWAR),J.